

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRADLEY ALLEN GRUBHAM,

Petitioner,

v.

SUPERINTENDENT OBERLAND,

Respondent.

CASE NO. C13-5646 RJB-JRC

ORDER CONTINUING A STAY
AND HOLDING THE PETITION IN
ABEYANCE

The District Court has referred this 28 U.S.C. § 2254 petition to Magistrate Judge J. Richard Creatura. The Court stayed this matter and has held it in abeyance since November of 2013 (Dkt. 23). Petitioner has kept the Court informed of the progress of his personal restraint petition in state court and filed status reports in April, May, and October of 2014 (Dkt. 26, 28, 30). Petitioner asks that the stay be continued until his motion for discretionary review has been addressed by the Washington State Supreme Court (Dkt. 30). Respondent agrees that the action should remain stayed (Dkt. 31).

District courts may use a “stay-and-abeyance” procedure while a petitioner exhausts his claims in state court. *Rhines v. Weber*, 544 U.S. 269, 275-77; *Calderon v. United States District*

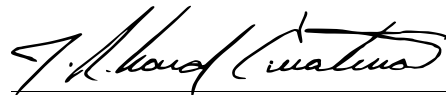
1 *Court (Taylor)*, 134 F.3d 981, 988 (9th Cir.1998). In determining whether the petition should be
2 stayed, the Court must also “be mindful that AEDPA aims to encourage the finality of sentences
3 and to encourage petitioners to exhaust their claims in state court before filing in federal court.”
4 *Wooten v. Kirkland*, 540 F.3d 1019, 1024 (9th Cir. 2008), *cert. denied*, 556 U.S. 1285 (2009)
5 (holding that petitioner’s “impression” that defense counsel had exhausted all of the issues in
6 state court did not fulfill the requirement to show “good cause”).

7 Both parties agree this action should be stayed. The Court grants petitioner’s uncontested
8 motion.

9 The Court orders that this matter remain stayed until May 22, 2015. Petitioner will file a
10 report and, if needed, a motion to extend the stay on or before May 8, 2015 -- fourteen days
11 before the stay ends. Petitioner will inform the Court of the status of his state proceedings.
12 Petitioner’s report will include the state court cause number. Further, if the state court dismisses
13 the petition or terminates review, petitioner will inform the Court and file a motion to lift the stay
14 within 30 days of the state court taking action. Petitioner’s failure to file a proper report or
15 inform the Court of the termination of state review will result in the Court issuing a report and
16 recommendation that this petition be dismissed.

17 The Clerk’s office is directed to remove Dkt. 30 from the Court’s calendar.

18 Dated this 5th day of November, 2014.

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21 J. Richard Creatura
22 United States Magistrate Judge
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